BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHN H. HOLTKE	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,051,759
HOLY CROSS SCHOOL	)	
Respondent	)	
	)	
AND	)	
	)	
PREFERRED PROFESSIONAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant appealed the January 27, 2012, Award entered by Special Administrative Law Judge (SALJ) Jerry Shelor. The Workers Compensation Board heard oral argument on May 1, 2012.

APPEARANCES

Denise E. Tomasic of Kansas City, Kansas, appeared for claimant. Lara Q. Plaisance of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant asserts he sustained a back injury as a result of a series of repetitive traumas commencing March 24, 2010, and each and every workday thereafter through approximately April 7, 2010, or his last day of work. Claimant contends he gave timely notice of the accident by notifying respondent's secretary on March 26, 2010. In the alternative, claimant alleges he had just cause to extend the notice period to 75 days as his

two supervisors, the school principal and parish manager, were unavailable when he tried to notify them of his accident. Claimant contends the school principal and/or parish manager had actual knowledge of the injury on or before his April 15, 2010, back surgery, which is within the 75-day extended notice period.

Respondent asserts claimant failed to give timely notice as the school secretary is not claimant's supervisor and did not tell claimant's supervisors about the accident. Respondent argues that the first time any of claimant's supervisors received notice or had actual knowledge that claimant was alleging that his injury was work related was when respondent received a letter from claimant's attorney on July 28, 2010. That date is 125 days after March 26, 2010, the date respondent contends is claimant's date of accident.

The SALJ determined that if claimant sustained a work-related injury, it was a single acute injury on March 26, 2010, and that claimant did not give timely notice of the accident to respondent. SALJ Shelor found claimant gave notice to respondent's secretary, who was claimant's co-worker, not claimant's supervisor. It was also determined by SALJ Shelor that claimant failed to prove there was just cause to extend the 10-day notice period to 75 days. Consequently, the SALJ denied the claim and did not address the remaining issues. Claimant appeals and argues he gave timely notice of the accident to respondent. Therefore, the only issues before the Board are:

1. What is claimant's date of accident? Did claimant suffer a single traumatic accident on March 26, 2010, or a series of repetitive traumas commencing March 24, 2010, and culminating on April 7, 2010, or his last day of work?

2. Did claimant give notice to respondent within 10 days after the date of accident? Was there just cause to extend the 10-day notice period to 75 days? If so, did respondent have actual notice of claimant's accident within 75 days after it occurred?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

Claimant began working for respondent as a custodian in July or August 2001. His direct supervisor was Mark Engen, parish manager, and the school principal, Mary Jo Gates, was his indirect supervisor. As part of his job duties, claimant was required to set up and take down tables that have fold-up legs. On March 26, 2010, claimant was putting away some of the tables when one slipped. As the table began falling, claimant attempted to catch it and something popped in his back. Both the table and claimant fell to the floor and claimant lay on the floor for approximately 15 minutes before he was able to get up.

Claimant's Application for Hearing filed on July 23, 2010, stated claimant incurred a back injury while lifting tables on or about April 1, 2010. On October 14, 2010, claimant

filed an amended Application for Hearing and alleged a series of injuries commencing March 24, 2010, and each and every workday thereafter through approximately April 7, 2010, or his last day of work. Claimant listed the cause of his injuries on the amended Application for Hearing as lifting tables and performing maintenance duties.

Claimant testified that after the accident, he attempted to report what happened to Ms. Gates, but she was not in. Claimant tried to contact parish manager Mark Engen, but could not get ahold of him. Instead, claimant reported the incident to Anita Lemmon, the school secretary. Claimant did not believe Ms. Lemmon communicated the conversation they had with anyone else. When claimant was asked if he told Ms. Lemmon the injury occurred at work, his testimony was as follows:

> Q. (Ms. Tomasic) And you told Anita Lemon *[sic]* that you injured your back and that you were going to have to go home?
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> A. (Claimant) Yes.
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> Q. Did you tell her how you injured your back?
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> A. If -- I'll put it this way, if I did, it was just a very, you know, general description. She knew that I was moving tables at that -- at that point and --
>
> Q. Okay. So she knew you hurt yourself at home -- at the office?
>
> A. Yes.[1]

Claimant testified that after the incident on March 26, 2010, he saw a chiropractor. On March 26, 2010, claimant called his family physician, Dr. George S. Postma, and told a nurse of the injury. Dr. Postma testified his records said the following about that telephone call:

> It says, Patient/wife called office and I spoke with her. He has prior history of slipped disk. He was turning to get up from a computer and had sudden pain. There's some typos in there. He was seen by a chiropractor who did multiple x-rays and did treatment, but still having lots of pain. Called requesting pain med and muscle relaxer to get by until office appointment Monday at 1500. Called prescriptions to pharmacy.[2]

Claimant testified that after the table incident he went to work for a couple of days and last performed job duties for respondent in early April 2010. At the regular hearing, claimant testified that to his recollection he did not talk about his back injury to Mr. Engen

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[1] R.H. Trans. at 14.

[2] Postma Depo. at 9.

until after having surgery on April 15, 2010. At the continuation of the regular hearing on July 26, 2011, claimant testified that sometime between March 26, 2010, and July 28, 2010, he told Mr. Engen of the back injury. Also at the continuation of the regular hearing, claimant believed he told Mr. Engen in the two weeks after the April 15, 2010, surgery that he was injured at work.

On March 29, 2010, claimant was seen by Dr. Postma. The notes from that visit indicated claimant presented with back pain occurring without any known injury. The notes also referred to the recent phone call. However, Dr. Postma's notes from the same visit also indicated claimant "moved wrong way and moving tables weighing about 125 #."[3] Dr. Postma billed claimant's health insurance provider for the March 29, 2010, visit. Dr. Postma opined that it was likely that claimant injured his back when manipulating the tables at school.

Dr. Postma referred claimant to Dr. Steven J. Hess, a neurosurgeon, who saw claimant on April 2, 2010. In a letter dated April 2, 2010, to Dr. Postma, Dr. Hess stated that claimant had a one-week history of excruciating pain down his back and right leg, just below the knee. The letter also stated claimant had problems with the lumbar disc, off and on for the past two to three years. Three years before April 2010 the back problems came on gradually, over six months, then went away. Then claimant had frequent intermittent flare-ups of back problems. Dr. Hess testified that claimant had a new disc herniation and some event caused claimant's back to become symptomatic. It was possible moving the school tables was that event, but that walking down the street or falling could also trigger symptoms of back pain.

Claimant completed a health questionnaire and a patient information sheet for Dr. Hess. On the health questionnaire, claimant did not complete the blank line that asked, "If injury, how did injury occur?"[4] On neither of the documents did claimant indicate he suffered a work-related accident. Dr. Hess indicated he would have noted it in his records if claimant had reported the cause of his back problems was a work-related accident. He also testified that to his knowledge claimant's health insurance and Medicare were billed for the treatment.

On April 15, 2010, Dr. Hess performed a right L4-5 micro laminotomy and right L4-5 micro disc excision to remove multiple loose intradiscal fragments and migrated fragments. Dr. Hess testified that during an October 28, 2010, follow-up visit, he was told by claimant that claimant had injured himself at work. Dr. Hess was told by claimant he reported the injury to a secretary at work because his supervisor was not available.

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[3] *Id.*, Ex. 1 at 5.

[4] Hess Depo. at 5.

Claimant conceded that he never told Ms. Gates about the accident. Claimant also testified that he had never been provided the employee handbook nor given instructions on how to report an on-the-job injury. A copy of the handbook was placed into evidence. It does not contain instructions on what an employee is to do if he or she is injured at work. Nor did claimant see a poster about workers compensation posted in the teachers' lounge.

Claimant testified that he reported the March 26, 2010, accident to respondent, but did not go into "detail with the doctors of blow by blow how did it happen."[5] When asked if he was honest with his doctors about his injury, claimant averred as follows,

> Q. (Ms. Plaisance) And did you tell the doctors that this injury had occurred at work, whether you gave them details or not, but did you tell them that it had occurred at work?
>
> A. (Claimant) As I -- as I best recollect, I skirted the issue as best I could.
>
> Q. Okay. And why was that?
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> A. Well, primarily because of, as I've testified before, the -- you know, I was -- I was aware that when -- when there was a workman's comp claim against -- against an employer, the insurance premiums would -- would go up substantially and so on and quite honestly, I didn't want to see that happen to my employer and so I didn't make any great big issue out of it, no.
>
> Q. Okay. So you were trying to save Holy Cross some money in -- in the long run?
>
> A. Yes.[6]

Anita Lemmon testified at her deposition that she has worked for respondent for 15 years. As school secretary she had daily contact with claimant. Ms. Lemmon indicated that in her capacity of school secretary she had a lot of people to keep tabs on. At the end of March 2010, claimant stopped by her desk and told Ms. Lemmon that he was leaving the building to see his chiropractor for his back. Claimant indicated he thought his back problems might be from lifting tables in the cafeteria. Ms. Lemmon did not recall whether she specifically told Ms. Gates that claimant reported a work injury. However, Ms. Lemmon was certain she discussed the matter with Ms. Gates and testified as follows:

> Q. (Ms. Tomasic) I'm asking after he told you that he was going to the chiropractor for his back, did you have any conversation with the principal?
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> A. (Ms. Lemmon) Specifically that day, I don't recall. But, yes, I'm sure that we did and the fact that he wasn't here Friday. He's -- once he was going to have the

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[5] R.H. Trans. at 46.

[6] *Id.*, at 45.

> surgery, it's, "Who are we going to get to the *[sic]* clean the lunchroom" -- "who are we going" -- you know, there was a matter of -- there had to be conversations so we knew how his position was going to be covered and that type of thing.[7]

Ms. Lemmon and claimant have been neighbors for 24 years. After the conversation at her desk with claimant, Ms. Lemmon only spoke to claimant about his back problems outside of work. However, during those conversations Ms. Lemmon was never told by claimant what he thought caused the injury. She did not discuss the matter further with Ms. Gates nor did she discuss it with Mr. Engen, except to ask Ms. Gates what to do with the notice of claimant's claim that respondent received in the mail and possibly to ask Mr. Engen about someone covering Mr. Holtke's duties. Ms. Lemmon testified she is not claimant's supervisor.

Mark Engen testified that he and Ms. Gates were claimant's supervisors, but that Ms. Lemmon was not claimant's supervisor. Mr. Engen was not asked, nor did he testify, whether Ms. Lemmon was an agent for respondent for the receipt of a notice of a workers compensation accident. Claimant introduced a copy of a job description for the position of school custodian. Mr. Engen indicated claimant signed the original of that document. It indicates that the school custodian reports to the business manager and school principal.

At the end of July 2010, Mr. Engen prepared a document entitled, "Recap of Events Surrounding John Holtke Worker's Compensation Claim" (Recap).[8] The Recap indicated respondent received a notice of the accident from claimant's attorney on July 28, 2010. The Recap also summarized several conversations Mr. Engen purportedly had with claimant between March 29, 2010, and July 16, 2010, concerning claimant's back condition. The Recap reflects that Mr. Engen spoke to Ms. Lemmon on March 26, 2010. However, Mr. Engen testified he had a conversation with Ms. Lemmon in early to mid-April 2010. The note for March 26, 2010, indicates Ms. Lemmon reported claimant's son-in-law came and took claimant to see a chiropractor. It states, "John did not mention to anyone at the school office nor to me that this was related to any specific incident and no incident report was filed."[9] Two of the conversations were on March 29 and April 5, 2010. Mr. Engen alleges he was not told by claimant during any of those conversations that claimant injured his back at work. Mr. Engen testified he had daily contact with claimant, but did not observe claimant working on a daily basis.

During one of his conversations with claimant, Mr. Engen told claimant that respondent had workers compensation insurance. However, this conversation was not

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[7] Lemmon Depo. at 11.

[8] Engen Depo. at 15 and Cl. Ex. 3.

[9] *Id.*, Cl. Ex. 3.

memorialized in the Recap and Mr. Engen was not asked when that particular conversation took place. Mr. Engen testified as follows concerning that conversation:

> Q. (Ms. Tomasic) At any point during the course of your conversations with Mr. Holtke regarding his back, did you ever suggest to him or give him information about workers' compensation and how to file a claim?
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> A. (Mr. Engen) I said that we -- the archdiocese does have workers' comp insurance, but he indicated, "Well, it wasn't related to any specific incident," and he probably wouldn't pursue that, until that final meeting in July, and then he asked if I had the notification of who to contact regarding a workers' comp claim.
>
> Q. And did you provide him with that information at that time?
>
> A. Yeah. Yeah, that's when I gave him a copy of this notice here (indicating).[10]

Mr. Engen acknowledged that claimant never said he injured his back outside of work. He testified:

> Q. (Ms. Tomasic) Did you ever ask him whether any of his duties at work had injured his back?
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> A. (Mr. Engen) Yes, I did.
>
> Q. And his response to that was what?
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> A. He said it didn't -- he didn't indicate -- he said that it wasn't related to any specific incident.
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> Q. He certainly did not tell you that he injured himself away from work?
>
> A. No.
>
> Q. You were not aware of him having any type of accidental injury at home or someplace outside of work?
>
> A. No, I was not.[11]

On August 16, 2010, Mr. Engen completed an Employer's Report of Accident for claimant's accident. It lists April 1, 2010, as the date of injury and indicated claimant injured his back lifting tables. No notes concerning the accident were made in claimant's personnel

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[10] *Id.*, at 26.

[11] *Id.*, at 25.

file. Mr. Engen also testified that he did not maintain formal attendance records for employees.

Mr. Engen testified that he believed a notice containing information concerning workers compensation was posted in the teachers' lounge, but he had never personally observed the notice being posted. He admitted no written guidelines were provided to employees on what to do if they were injured at work. Mr. Engen testified that on July 16, 2010, he learned claimant needed to be off work intermittently until October 2010. Claimant was discharged and paid through July 31, 2010. Claimant then received Family Medical Leave Act benefits from respondent through October 31, 2010. Respondent terminated claimant's health, dental and vision insurance on October 31, 2010.

At Mr. Engen's deposition, respondent introduced the transcript of claimant's deposition taken on September 27, 2010, as an exhibit.[12] Claimant's testimony at the deposition as to how the accident occurred was consistent with the testimony he gave at the regular hearing. Claimant also testified at the deposition that he told Ms. Lemmon about suffering a back injury while moving tables. Claimant testified that a day or two after the accident, but before he received treatment, he discussed the accident with Mr. Engen, but did not ask for medical treatment.

Mary Jo Gates testified Ms. Lemmon's duties included sitting at the front desk at the school, answering the phone, greeting people and keeping tabs on a lot of people. Another of Ms. Lemmon's duties was to deliver messages to Ms. Gates. Ms. Gates stated that it was not one of Ms. Lemmon's duties to accept a report from an employee concerning a workers compensation claim. Nor was Ms. Lemmon given instructions on what to do if an employee reported an accident or injury. The following colloquy is significant:

> Q. (Ms. Tomasic) So she [Ms. Lemmon] is sort of a clearinghouse or an agent for the school. Would that be an accurate description?
>
> A. (Ms. Gates) Yes.[13]

In late March 2010, Ms. Gates was told by Ms. Lemmon that claimant was going to leave work to get chiropractic treatment. Ms. Gates first learned claimant had a back problem shortly before his surgery. Ms. Gates indicated that no one in the building, including herself, Ms. Lemmon, or the school nurse, maintained records concerning claimant's back injury, his attendance or why he was off work during the course of treatment for his back. When asked if Ms. Lemmon ever told her that claimant told Ms. Lemmon he injured his back while moving tables, Ms. Gates answered in the negative. Ms. Gates alleges that at one point she asked Ms. Lemmon why claimant was having surgery, but Ms. Lemmon did not know the reason. Ms. Gates also testified that she did not know why

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[12] *Id.*, Resp. Ex. C.

[13] Gates Depo. at 12.

claimant was having back surgery, and never conversed with claimant about his back problems or surgery.

Ms. Gates testified the first time she became aware that claimant was alleging a work-related back injury was when she received a telephone call from Holly Sampson of Catholic Mutual asking for an incident report. At the beginning of the 2010-2011 school year, Ms. Gates put in place a procedure that all employees must read the employee handbook and sign an acknowledgment they did so. However, she did not know if that procedure was in place when claimant was employed by respondent. Ms. Gates testified she personally placed a workers compensation poster in the teachers' lounge, but could not state with certainty the poster was there in March and April 2010.

The SALJ concluded that claimant failed to give timely notice. SALJ Shelor stated in his Award:

> Claimant failed to comply with K.S.A. 44-520. The evidence in this case proves that if there was a work-related accident, it was an acute, traumatic event on March 26, 2010, not a series, as alleged. Dr. Hess and Dr. Postma both testified that the injury Claimant sustained was most likely, to a reasonable degree of medical certainty, an acute injury. Claimant testified repeatedly about a sudden onset of pain with a specific event of falling with a table.
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> Respondent did not have notice of a work-related accident until July 28, 2010, 125 days after the date of accident by way of a letter from Claimant's counsel. Claimant contends that he provided notice by reporting a vague general description to the school secretary, Anita Lemmon, on the day he left school in pain. However, Claimant cannot say with any certainty that he told Ms. Lemmon. Ms. Lemmon is not Claimant's supervisor. Mr. Engen, Ms. Gates, Ms. Lemmon and Claimant have all testified that Claimant's only supervisors are Mr. Engen and Ms. Gates. Ms. Lemmon has never been authorized as an agent of the school for purposes of receiving notice of a worker's compensation injury.[14]

PRINCIPLES OF LAW

K.S.A. 2009 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2009 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

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[14] SALJ Award (Jan. 27, 2012) at 8.

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence.[15]

K.S.A. 44-520 states:

> Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

ANALYSIS

The facts in this claim are convoluted. Claimant testified that he injured his back on March 26, 2010, while lifting tables at work. On the same day, claimant told Ms. Lemmon how the back injury occurred. Despite the fact that claimant admits he did not tell the entire truth to his treating physicians about the cause of his back injury, the greater weight of the evidence indicates claimant sustained a single traumatic accident on March 26, 2010. There is little evidence in the record that claimant suffered a series of injuries as alleged in his amended Application for Hearing. The Board finds claimant's date of accident was March 26, 2010.

The employee handbook did not direct to whom an employee should give notice of a work-related injury. Respondent's administrative procedures were informal, and respondent did not keep records on employee absenteeism. A poster concerning workers compensation was in the teachers' lounge, but it is unknown whether the poster was up on the date claimant was injured or what information the poster contained. Claimant testified he did not see the poster and received no instructions on how to report an injury.

On March 26, 2010, claimant attempted to report his accident to the school principal, Ms. Gates, but she was not available. Ms. Lemmon corroborated that she was told by claimant in late March 2010 about how the accident occurred and the resulting back injury.

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[15] *Box v. Cessna Aircraft Company*, 236 Kan. 237, 689 P.2d 871 (1984).

It is unclear whether Ms. Lemmon specifically told Ms. Gates or the parish manager, Mr. Engen, how claimant was injured. However, Ms. Lemmon testified that on or shortly after the date of claimant's accident, Ms. Lemmon discussed the situation with Ms. Gates.

In *Holt*,[16] claimant reported his accident to an individual at his employer by the name of Debbie, who admittedly was not claimant's supervisor. Debbie worked in the personnel department as an assistant to the head of personnel and payroll. The uncontradicted evidence indicated employees were to report injuries to personnel. Claimant asserted Debbie was a proper representative of respondent to receive notice of the accident and the Board Member who decided *Holt* agreed. In the present claim, claimant reported his accident to Ms. Lemmon, the person who kept tabs on everyone and who was the agent for Ms. Gates. Like the individual by the name of Debbie in *Holt,* Ms. Lemmon was not claimant's supervisor, but was the clearinghouse at respondent. Consequently, the Board finds claimant satisfied the timely notice requirements contained in K.S.A. 44-520, when he reported the accident to Ms. Lemmon on March 26, 2010.

There is also ample evidence in the record to support a finding that claimant gave timely notice of his accident to Mr. Engen. The Board finds claimant is a credible witness. Claimant testified at his deposition that he told Mr. Engen of the accident after it occurred, but before claimant sought treatment. Mr. Engen's Recap indicated he spoke to claimant about his back injury on March 29 and April 5, 2010. Mr. Engen also testified that he and claimant communicated on a daily basis. Claimant last performed job duties for respondent in early April 2010. It is difficult to imagine that during these multiple conversations between claimant and Mr. Engen in the 10 days after claimant's accident that claimant did not disclose the cause of his back injury.

CONCLUSION

Claimant gave timely notice of his accident to respondent as required by K.S.A. 44-520.

AWARD

WHEREFORE, the Board reverses the January 27, 2012, Award entered by SALJ Shelor and remands the matter to the ALJ for a determination of the remaining issues and further orders consistent with this Order.

IT IS SO ORDERED.

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[16] *Holt v. Scholfield Honda,* No. 213,437, 1997 WL 107615 (Kan. WCAB Feb. 20, 1997).

Dated this ____ day of June, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent from the majority. Although I agree that claimant sustained a single traumatic event on March 26, 2010, and that the facts of the claim are convoluted, I cannot join in the majority's finding that claimant satisfied his burden to prove he provided timely notice to respondent as required by K.S.A. 44-520.

There is no evidence that the school secretary, Ms. Lemmon, was claimant's supervisor or was a part of respondent's management structure. Rather, the evidence establishes that Ms. Lemmon was simply one of claimant's co-workers. There is no support in the record for the notion that Ms. Lemmon was respondent's duly authorized agent. The majority's finding that Ms. Lemmon was "the clearinghouse at respondent" and that she "had a lot of people to keep tabs on" is insufficient as a matter of law to satisfy the notice requirement. There is no evidence that, assuming Ms. Lemmon had knowledge of claimant's accident, she imparted that knowledge to respondent.

Notice to a co-worker or to someone not in a supervisory position with the employer does not constitute giving notice to the employer.[17]

There is no evidence that claimant was unable to provide notice to respondent because the employer was unavailable to receive notice. Although claimant attempted, on one occasion, to notify his supervisors, Ms. Gates and Mr. Engen, of the accident, he had ample opportunity to provide notice to either Ms. Gates or Mr. Engen within the 10-day period following the accident.

[17] *Barnett v. Liberty Mutual Insurance Group*, No. 1,002,267, 2003 WL 22401208 (Kan. WCAB Sept. 19, 2003).

The majority concluded that there is ample evidence in the record that claimant gave timely notice of the accident to Mr. Engen. However, that finding stands in stark contrast to the majority's summary of claimant's testimony:

> At the regular hearing, claimant testified that to his recollection he did not talk about his back injury to Mr. Engen until after having surgery on April 15, 2010. At the continuation of the regular hearing on July 26, 2011, claimant testified that sometime between March 26, 2010, and July 28, 2010, he told Mr. Engen of the back injury. Also at the continuation of the regular hearing, claimant believed he told Mr. Engen in the two weeks after the April 15, 2010, surgery that he was injured at work.

It can hardly be concluded, even from claimant's own testimony, that he notified Mr. Engen of his accident within the required 10-day period. Claimant conceded that he did not notify Ms. Gates of the accident. The evidence does not establish that respondent had actual knowledge of the accident or that just cause existed to extend the 10-day deadline for up to 75 days.

For these reasons, I would affirm the ALJ's decision.

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BOARD MEMBER

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